IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1469 of 1999

in

SPECIAL CIVIL APPLICATIONNo 431 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

VJ THAKKER, EX. DY EXECUTIVE ENGINEER

Appearance:

MR HS MUNSHAW for Appellant

MR NALIN K THAKKER for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/08/2000

ORAL JUDGEMENT

The appellant challenges the judgment and order dated 31st August, 1999 passed by the learned Single Judge holding that the respondent's letter dated 20-8-1989 seeking voluntary retirement became effective on the expiry of three months from the date of receipt of that letter and thereafter the respondent ceased to be in service of the appellant by seeking voluntary retirement. It was held that in this view of the matter there remained no occasion in the year 1994 for initiating any inquiry for unauthorised absence from duty after the respondent ceased to be the employee by virtue of his voluntary retirement.

2. The learned Counsel for the appellant argued that under the scheme of voluntary retirement, a clear three months notice was required to be given and the respondent had not given any such three months clear notice. From the letter dated 20th September, 1989 at Annexure "E" to the petition, it was pointed out that there was no mention of three months notice period mentioned therein. It was therefore argued that since no three months notice period was given, the application for voluntary retirement had not become effective and it was open for the Department to initiate an inquiry against the respondent in respect of his unauthorised absence from service.

3. It would be seen from the resolution dated 3rd February, 1978 which deals with voluntary retirement that an employee was given an option to voluntarily retire from service after 20 years of service by giving a three months notice. There is no requirement that the period of three months notice should end at the end of a calendar month or on any other date. Therefore, the period of three months would count from the date when the notice is received. Moreover, admittedly there is a provision under the scheme to waive the period of three months as per Clause (3) of the resolution.

4 If we turn to the letter of voluntary retirement at Annexure "E" to the petition, it becomes clear that the respondent had in fact requested the concerned authority to allow him to voluntarily retire as early as possible. On the basis of this application therefore it was open for the concerned authority even to permit him to retire before the expiry of three months. When the request was being made that he should be allowed to

voluntarily retire as early as possible, mere non mentioning of three months would not invalidate the notice of retirement. At the best, it would not operate till the period of three months from the date when it was received was over. Therefore, in our opinion, the learned Single Judge was right in holding that the letter of voluntary retirement became effective on the expiry of three months from the date of its receipt and that since the respondent stood voluntarily retired, there was no question of initiating any inquiry against him on the ground of absence from duty.

This appeal is therefore summarily dismissed.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)
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